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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,799	12/11/2003	Barton D. Gaskins	105916.167US1	5878
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BAKER & MCKENZIE LLP Pennzoil Place, South Tower 711 Louisiana, Suite 3400 HOUSTON, TX 77002-2716			EXAMINER HANDY, DWAYNE K	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 08/08/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/732,799	<b>Applicant(s)</b> GASKINS ET AL.	
	<b>Examiner</b> Dwayne K. Handy	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11,13-15,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11,13-15,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6-11, 13-15, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Slavazza et al. (6,320,025). Slavazza teaches a peptide synthesis vessel. The vessel is best shown in Figure 4. The vessel is comprised of a container body (41) closed on both ends by steel plates (42 and 43). Steel plate 43 contains a first and second port with filter tubes (48). The tubes are connected to a solvent removal line (49) having a pump (51). Slavazza teaches pore size of the filter and use of Teflon in column 2, lines 55-60.
3. Claims 1, 2, 6-10, 13-15, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Tolbert et al. (4,184,916). Tolbert teaches a cell culture system. The system is best shown in Figures 1 and 2. The system includes a container (10) closed by stopper (15) having multiple ports. One port has a filter (20) comprised of a tubular

Art Unit: 1743

body (27) having openings connected via tube (24) to a pump (col. 6, lines 6-12). The other ports contain additional tubes (18, 19) for the addition or removal of fluids. Tolbert discloses pore sizes for the filter and use of porcelain or Teflon in column 3, lines 19-45.

4. Claims 1, 3, 4, 9, 10 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tosa et al. (5,578,455). Tosa teaches an apparatus for determining endotoxin. The apparatus is shown in Figure 1 and described in columns 4 and 5. The apparatus includes a container (6) with a cover (7) having first and second ports. One port has a column (4) with filter (3) connected to a pump (11) by a tube (10). The other port contains an air vent (8) with a filter (9). Tosa teaches that the container and column may be made of glass in column 4, lines 38-44.

5. Claims 1, 2, 9, 10, 13-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (4,649,118). Anderson teaches a cell culturing apparatus. The device is best shown in Figure 1 and described in columns 2-4. The device includes a container (12) covered by a lid (21) having ports leading to conduits (29, 31 and 36) within the vessel. Tubular member 36 is attached to a tubular filter assembly (40) made of Teflon (col. 3, lines 56-61) and having a filter (48) with multiple openings along the tube. Anderson teaches a vacuum pump for drawing fluids through the member (36) in column 4, lines 64-65.

***Inventorship***

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1743

8. Claim 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (4,649,118) in view of Elgas (5,080,868). Anderson teaches every element of claims 3-5 except for a frit on the second port. Anderson teaches second and third ports/lines (29, 31) for fluid input, but these do not include a frit. Anderson does teach an auxiliary supply line (71) for gas. Elgas teaches a sparger assembly. The assembly includes a purge tube with a frit on the end that extends into a container. It would have been obvious to one of ordinary skill in the art to add the frit to one of the additional ports of Anderson. This would allow for the addition of gas through one of those ports and provide a means to input gas in addition to the auxiliary line.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kath (5,945,070) shows a vessel having a frit at the end of a port. Yamaguchi et al. (5,520,858) and Juranas (5,709,840) teach reactors having multiple ports in the cover.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DKH  
June 5, 2007

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700